SUPREME COURT, U. S.

FEB 12 1969

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 610

JOHN J. SULLIVAN, Tax Commissioner of the State of Connecticut, GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT K. KILLIAN, Attorney General of the State of Connecticut,

Appellants,

vs.

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U.S.N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees.

On Appeal from the United States Court of Appeals
For the Second Circuit

Brief of the States of California and Illinois, Amici Curiae, in Support of Appellants

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UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U.S.N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,

Appellees.

On Appeal from the United States Court of Appeals
For the Second Circuit

Brief of the States of California and Illinois, Amici Curiae, in Support of Appellants

INTEREST OF AMICI CURIAE

This brief of *amici curiae* is presented for the State of California sponsored by its Attorney General. The State of California imposes a sales and use tax which is administered by the California State Board of Equalization. In addition, the State Board of Equalization admin-

isters local sales and use taxes for the various counties and cities of the State of California. There are approximately 345,000 servicemen stationed in the State of California of whom over 300,000 were not California residents or domiciliaries at the time they entered military service. California State and local sales taxes paid by these servicemen from other states amount to approximately $3,000,000 annually. There is also an undeterminable number of servicemen stationed in neighboring states who periodically come to California while on leave or pass.[1]

The applicability of the California use tax will be directly affected by the outcome of this case, as it is substantially identical to the Connecticut use tax. Moreover, although the legal incidence of the California sales tax differs from that of the Connecticut sales tax, the opinion of the Court of Appeals in this case apparently, though perhaps unintentionally, obliterates the significance of a distinction based on legal incidence.

The State of Illinois sponsored by its Attorney General joins in this *amici curiae* brief on the basis of the following considerations:

1. There are many thousands of servicemen in Illinois who were not Illinois domiciliaries or residents at the time they entered the service.

2. The applicability of the Illinois use tax will be directly affected by the outcome of this case as it is substantially identical to the Connecticut use tax.

3. The legal incidence of the Retailers' Occupation Tax is, like the California sales tax, solely on the retailer and is not on the purchaser.

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1. The holding by the Court of Appeals necessarily requires every retailer to inquire of every serviceman-purchaser whether he is stationed in the state, in the state on leave, or if he is domiciled there. If he is in either of the latter two categories, he would have to pay tax as he is not there "solely" by reason of orders.

Accordingly, our purpose for filing this *amici curiae* brief is twofold: (1) to directly support the State of Connecticut in its contention that section 514 of the Soldiers' and Sailors' Civil Relief Act 54 Stat. 1186, 56 Stat. 777, 50 U.S.C. App. 574 (hereinafter sometimes referred to as the "Civil Relief Act") does not preclude the application of the Connecticut sales and use tax to servicemen. In conformity with rule 42(3) we will limit our presentation in this regard to those facets of the argument which, on the basis of an examination of the brief of Connecticut in the Court of Appeals, will not be covered by Connecticut. (2) In the event that this Court should decide adversely to Connecticut, this *amici curiae* brief will make clear that the different legal incidence of the California type sales tax and the Illinois Retailers' Occupation Tax excludes such taxes entirely from the scope and purpose of the Civil Relief Act. Although brief mention is made by Connecticut in its jurisdictional statement of other types of taxes whose legal incidence is on the retailer or vendor, e.g. taxes on cigarettes and gasoline, it seems evident therefrom and from the brief filed by Connecticut in the Court of Appeals that this matter will not be adequately covered in the absence of our filing this *amici curiae* brief.

ARGUMENT

I. The Soldiers' and Sailors' Civil Relief Act Was Not Intended to Affect the Right of the States to Impose Non-Discriminatory Sales and Use Taxes with Respect to Transactions to Which a Non-Resident Serviceman Is a Party.

A fundamental question here presented relates to the intent of Congress, both in its initial enactment in 1942 of and its subsequent amendments to section 514 of the Civil Relief Act. In *Dameron v. Brodhead,* 345 U.S. 322 (1953), this Court stated the purpose for the passage of section 514 of the Civil Relief Act as follows:

> "In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both *income* and *property* taxes imposed by any state by virtue of their presence there as a result of military orders. *It saved the sole right of taxation to the state of original residence whether or not that state exercised the right.* Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." 345 U.S. 322 at 326. (Emphasis added)

Thus, this Court held the tax immunity furnished by the Civil Relief Act was (1) granted with respect to income and property taxes and (2) that it was designed to prevent the state where the serviceman was stationed from imposing these types of taxes which could also be imposed by the state of residence, whether that state chose to impose these taxes or not.

The *Dameron* case was decided in 1953. The first amendment of section 514 of the Soldiers' and Sailors' Civil Relief Act subsequent to this decision was in 1962 when the law was amended to its present form. See, 76 Stat. 768. At the time of the 1962 amendment, Congress had the benefit of this Court's interpretation of that act from the *Dameron* decision as affording the limited immunity outlined above. The various state sales and use tax laws had been in operation for approximately 30 years at the time of this 1962 amendment. Congress was, therefore, obviously aware that these taxes were imposed on transactions to which servicemen were parties. If Congress had intended to expand the immunity afforded by the Civil Relief Act to cover such taxes, it was certainly capable of describing such excises

with the precision it used for this purpose in the Buck Act, 61 Stat. 641, 4 USCA § 105. That it chose not to do so seems very significant.

Moreover, Senate Report No. 2182 prepared with respect to the 1962 amendment of the Civil Relief Act conclusively demonstrates that no fundamental expansion of the Civil Relief Act was contemplated by Congress. Thus, Senate Report No. 2182 states:

> "The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where *personal property taxes may not be imposed upon property of a serviceman located in a State,* such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574(1)), so as to *clarify* a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his personal property, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning personal property in a State other than his State of domicile, is not subject to taxation on his personal property by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. *The basic intent of the original Civil Relief Act was to exempt servicemen from this form of taxation, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State, would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act.* This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service.

There would be no cost resulting from enactment of the proposal. All of the provisions of the Soldiers' and Sailors' Civil Relief Act, other than those concerning insurance, are enforced by local courts and are not subject to centralized administration by a Federal agency.

The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:"[2] (Emphasis added) U. S. Code, Cong. and Admin. News, 87th Congress, Second Session, 1962, at p. 2841.

Section 514 of the Civil Relief Act was passed by Congress in 1942. 56 Stat. 777. It has thus been part of the federal law for over a quarter of a century. The legislative history of the Act, however, contains nothing indicating an intent to apply the Act to sales and use taxes. In fact, not

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2. The reports referred to are in full accord with the intent to amend the Civil Relief Act for the limited purpose described in the "Explanation of the Bill" in Senate Report No. 2182 set forth above. These reports may be found in the Appendix to this brief.

once during that entire period did Congress give any notice to the states that sales and use taxes were being considered in relation to the Act. The states whose revenues would be adversely affected by expanding the immunity furnished by the Civil Relief Act to sales and use tax transactions have accordingly never had an opportunity to make their views on the matter known to Congress.

The democratic process requires that interested groups be afforded the opportunity to express their views on proposed legislation. This requirement can be met here by accepting the legislative history as an authoritative indicator that Congress intended to create only the limited immunity previously discussed. For the courts to establish areas of immunity for sales and use taxes not contemplated by either Congress or the states at the time the Civil Relief Act was enacted or amended would, on the other hand, ill serve the democratic process.

The dissenting opinion by Justice Douglas (concurred in by Justice Black) in the *Dameron* case, states in part:

> "In sum, the power to tax is basic to the sovereignty of the states. The creation of islands of tax immunity should therefore be sparingly made. The tax immunity here recognized is not contained in the Constitution. It cannot be fairly implied because Denver's tax does not burden the performance of any federal function." 345 U. S. 329.

Even stronger are the reasons in the instant case for not recognizing the new islands of immunity from sales and use taxes which the appellees are attempting to spring on the surprised states in complete disregard of the intent of Congress as evidenced by the legislative history of the Civil Relief Act.

Moreover, the construction given to the Civil Relief Act by the courts below would impose great administrative difficulties upon those states which impose sales and use tax laws. The problem of retailers in discovering which servicemen stationed in the state are nondomiciliary are obvious. This matter will no doubt be fully covered in the brief by Connecticut. Less obvious but equally onerous would be the problem presented to retailers of discovering whether the serviceman is absent from his domiciliary state on military orders or on the basis of his voluntary decision. For example, a soldier who is a California resident and is stationed in this State may decide to go to Las Vegas on a furlough or a soldier who is a resident of New York and is stationed in Nevada may similarly come to San Francisco. Under these circumstances, the Civil Relief Act could not possibly have any application to sales transactions involving such servicemen. However, the Nevada retailer or the California retailer, under the decisions of the Courts below, would not know whether to add a sales tax to the sales price of items sold to such serviceman unless he knew both the domicile of the soldier and whether he was in the particular state solely under military orders or by virtue of his own volition. Where, as here, Congress has been silent, it would seem improper for the judiciary to deliver such a burden to the several states and to the millions of retail establishments therein.

Additional problems which suggest themselves under the holdings of the courts below include the practical impossibility of preventing the further expansion of tax immunity which will inevitably result from servicemen buying property free of sales tax on behalf of others, either for friendship or profit. In addition, the problems which arise if immunity from sales tax is to apply to purchases made by

the wife and children of a serviceman whether stationed in the state of purchase or stationed abroad are staggering. It seems evident, moreover, that a serviceman stationed in his home state would be discriminated against since he would not enjoy the tax windfall afforded to servicemen from out of state.

II. There Are Additional Reasons Why the Civil Relief Act Is Inapplicable if the Legal Incidence of a State Sales Tax Is on the Retailer.

In the opinion of the Court of Appeals in this case (*U. S. v. Sullivan,* 398 F.2d 672), there is the unfortunate suggestion that the application of a sales tax to nondomiciliary servicemen would not necessarily be affected by whether the legal incidence of the tax was on the retailer or the purchaser. In that regard, the Court said:

> ". . . In addition, as with the use tax, the sales tax is computed as a percentage of the property's value, as approximated by its sales price. These basic characteristics indicate that the sales tax also falls within the definition of a tax 'in respect of . . . personal property.' " 398 F.2d 672 at 676.

While these *amici curiae* are in full accord with the position of Connecticut that the Connecticut sales and use tax properly applies to transactions involving nondomiciliary servicemen, it seems desirable to point out that there are additional reasons why a sales tax whose legal incidence is on the retailer would not be barred by the Civil Relief Act.

In *First Agricultural Bank v. Tax Commission,* 392 U. S. 339 (1968), this Court was careful to note that the legal incidence of a tax was of significance. In this regard, this Court said:

> ". . . The court below held, contrary to appellant's contention, that the Massachusetts sales tax is not im-

posed upon the bank as a purchaser, but is a tax upon vendors who sell tangible personal property to the bank. Of course if this is true, the bank cannot object if a particular vendor decides to pass the burden of the tax on to it through an increased price. . . ." 392 U. S. 339 at 346.

There is a clear distinction to be drawn between the legal incidence of sales tax under Connecticut law on the one hand and the legal incidence of the California sales tax and the Illinois Retailers' Occupation Tax on the other. The Court below relied upon the decision of the Connecticut Supreme Court in *Avco Manufacturing Corp. v. Connelly,* 145 Conn. 161, 140 Atl. 2d 479 (1958), in deciding that the Connecticut sales tax is in reality assessed against the buyer as well as the vendor of tangible personal property. In fact, the Connecticut sales tax law expressly provides that the retailer has a cause of action in debt against the purchaser for the tax and that the tax shall be added to the purchase price. Ch. 219, Conn. Gen. Stats. sec. 12-408/27. The Connecticut sales tax is in this sense identical to the Massachusetts tax which was held by this Court in the *First Agricultural Natl. Bank* case, *supra,* to have its incidence on the purchaser.

The California type of sales tax is entirely different. By statute the incidence is solely upon the retailer. Calif. Rev. & Tax. Code section 6051.[3] The retailer is allowed to reimburse himself from the customer to the extent that he can. Secs. 6052, 6053. However, and significantly for this case, it has been the consistent administrative and judicial construction of the California statutes over a 36 year period that the extent to which reimbursement is obtained is

3. All citations within this portion of the brief to statutes are to the California Revenue and Taxation Code unless otherwise indicated.

strictly a voluntary matter of contract between the retailer and his customer. As stated by the California Supreme Court over 30 years ago in *Western Litho. Co. v. State Board of Equalization,* 11 Cal. 2d 156, 78 P.2d 731 (1938):

> ". . . The tax being a direct obligation of the retailer and, so far as the consumer is concerned, a part of the price paid for the goods and nothing else, it is neither in fact nor in effect laid upon the consumer. It does not become a tax on the sale nor because of the sale, but remains an excise tax for the privilege of conducting a retail business measured by the gross receipts from sales." 11 Cal. 2d 156 at 164, 78 P.2d 731 at 735, 736.

If the contract between those parties fails to provide for reimbursement, the retailer has no right to collect from the buyer. *Clary v. Basalt Rock Co.,* 99 Cal. App. 2d 458, 222 P.2d 24 (1950); *Pac. Coast Eng. Co. v. State of California,* 111 Cal. App. 2d 31, 244 P.2d 21 (1952); *Livingston Rock & Gravel Co. v. DeSalvo,* 136 Cal. App. 2d 156, 288 P.2d 317 (1955). The retailer is in no way required to obtain reimbursement and may waive entirely his right to seek it. *Clary v. Basalt Rock Co., supra; Roth Drug Inc. v. Johnson,* 13 Cal. App. 2d 720, 57 P.2d 1022 (1936). Any reimbursement he and the customer agree upon is considered to be an addition to the sales price that is allowed to be separately stated so that the reimbursement itself is not taxed. *DeAryan v. Akers,* 12 Cal. 2d 781, 87 P.2d 847 (1939), cert. den. 308 U.S. 581 (1939). The California sales tax creates no relationship whatsoever between the State and the purchaser. Accordingly, that customer does not even have standing to bring suit regarding the sales tax. *Meyer Construction Co. v. Korbett,* 7 Fed. Supp. 616 (D. Calif. 1934); *Graham Bros., Inc. v. Los Angeles,* 6 Cal. App. 2d 203, 44 P.2d 451 (1935); *Western Litho. Co. v. State Board of Equalization,* 11 Cal. 2d 156, 78 P.2d 731 (1938).

This aspect of the California type sales tax is significant for two reasons. First, the California type of sales tax cannot be held to be a tax on a serviceman-purchaser. As indicated by the authority cited any tax reimbursement paid by the serviceman is strictly a voluntary contractual matter between him and his vendor. The vendor has no statutory rights in debt or otherwise against his purchasers. The State of California also has no rights of any sort against a serviceman-purchaser or any other purchaser under its sales tax law. This is equally true whether reimbursement of the vendor is contractually agreed to or not by that purchaser. The tax is thus not "in respect of" the serviceman's personal property. Rather it is levied solely upon the retailer for his privilege of operating as such.[4] Thus, the tax is not covered by the Civil Relief Act as that Act is designed solely to apply to taxes levied on the serviceman or in respect of his property. At a minimum, therefore, this Court should hold the Civil Relief Act does not apply to the type of sales tax law found in California and Illinois.

The other reason why the legal incidence of the California type sales tax cannot be ignored is perhaps more crucial. The *Dameron* case, *supra,* construed the Civil Relief Act to save the sole right of property and income taxation of servicemen to the state of original residence whether

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4. This distinction is substantial. Even assuming the Civil Relief Act covers those sales taxes having their incidence on the serviceman-purchaser it would not thereby cover a tax measured by sales to such purchasers but having its sole incidence on the retailer. It is a well established proposition that a subject which is itself exempt from taxation may nevertheless be included in the measure of a tax having its incidence on a nonexempt subject. See, *e.g., Pacific Co. v. Johnson,* 285 U. S. 480 (1932), (interest income exempt as such from income tax held includable in income figure used as measure of tax on franchise), *U. S. v. City of Detroit,* 355 U. S. 466 (1957) (tax exempt government property held includable in measure of tax in hands of non-government user.)

that state exercised the right or not. This was accomplished by the legal fiction declaring the serviceman and his property to have their taxable situs in the original state of residence regardless of their actual physical situs. Since the original state is given this right to levy the taxes denied to the state of presence the statute has not created a taxing hiatus. More precisely, the Act has never been construed to deny entirely to all states the right to tax in situations involving servicemen. Precisely this will happen, however, if the California type tax is held covered by the Act.

Consider the case of a California domiciliary serviceman stationed in Connecticut. The Civil Relief Act can and does maintain the California situs for his income and personal property taxes. It does not however establish a California "situs" for sales to him by Connecticut retailers. Thus, if Connecticut cannot tax sales to him no one can. California cannot tax a sale to its domiciliary because the sale did not occur here. *McLeod v. Dilworth Co.*, 322 U.S. 327 (1944). Furthermore, even if the "situs" of the sale could be fictitiously removed to California nothing would be accomplished. The previous authorities clearly show there is no statutory basis under California law for levying a sales tax on the serviceman-purchaser. Furthermore, it cannot tax the retailer as his "situs" could not possibly be affected by the Act and he is not a California retailer subject to the tax. Thus, no state could levy a sales tax and for the first time the Civil Relief Act would lead to complete tax avoidance. Amici Curiae submits that this result was never intended by Congress and that this Court should not allow its occurrence.

CONCLUSION

For the reasons set forth herein, as well as the reasons set forth in the brief filed on behalf of the State of Connecticut, it is respectfully submitted that Connecticut has for the last twenty years correctly interpreted the Civil Relief Act as not barring application of the Connecticut Sales and Use Tax Law to transactions involving servicemen and accordingly the decisions of the courts below should be reversed.

However, in the event this Court does not accept the proposition set forth above, it is respectfully submitted that this Court's opinion should limit the immunity afforded under the Civil Relief Act to those taxes whose legal incidence falls on servicemen and not extend the immunity to taxes the incidence of which is on a retailer or vendor.

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(Appendix Follows)

Appendix

Reports to Congress referred to in Senate Report No. 2182 respecting the 1962 amendment of section 514 of the Soldiers' and Sailors' Civil Relief Act. (Set forth in U. S. Code Cong. and Admin. News, 87th Congress, Second Session, 1962, pp. 2842-2844.)

"The favorable reports of the Veterans' Administration, Bureau of the Budget, and Department of Defense now follow:

SEPTEMBER 10, 1962.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in further reply to your request for a report by the Veterans' Administration on H.R. 9747, 87th Congress.

The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting personal property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App.U.S.C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason

of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family.

The Soldiers' and Sailors' Civil Relief Act was designed to afford broad protection to persons while in military service. Except for article IV, relating to the guarantee of certain commercial life insurance premiums, the provisions of the act are not administered by the Veterans' Administration, although our loan assistance activities are sometimes affected if the veteran has reentered the service. Most of the provisions of the act, including section 514, are construed and enforced by the courts in individual cases.

It is noted that the text of the bill has been amended as recommended by the Secretary of the Army in his report of July 24, 1962, to the chairman of the Committee

on Veterans' Affairs, House of Representatives, and, as so amended, the bill would not be objectionable to the Department of Defense. As we indicated in our report to the House committee, a copy of which is enclosed for your ready reference, the Veterans' Administration defers to the views of the Departments of Defense and Justice as to the merits of the proposed legislation.

Advice was received from the Bureau of the Budget with respect to a similar report on this proposal to the House Committee on Veterans' Affairs that there was no objection to the presentation of such report from the standpoint of the administration's program.

Sincerely,

W. J. DRIVER,
Deputy Administrator
(For and in the absence of J. S. Gleason, Jr., Administrator).

Servicemen—State Taxes

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., August 31, 1952.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U. S. Senate, Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: This is with reference to your request of August 28, 1962, requesting the views of this office with respect to H.R. 9747, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

For the reasons set out in the report which the Department of the Army, on behalf of the Department of Defense, is submitting on this bill, the Bureau of the Budget would favor the enactment of H.R. 9747.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for
Legislative Reference.

DEPARTMENT OF THE ARMY,
Washington, D. C., September 4, 1962.

Hon. LISTER HILL,
Chairman, Senate Labor and Public Welfare Committee,
U. S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your recent request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 9747, 87th Congress, a bill to amend section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose. The Department of the Army on behalf of the Department of Defense favors the bill as passed by the House of Representatives.

The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.App. 574) as they relate to the taxation of personal property, presently provide that "for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession, or political subdivision of any of the

foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district." Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H.R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H.R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, United States and Captain Har-

old S. Bottomley, Jr., USN v. Arlington County, is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in the Far East. H.R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable.

For the foregoing reasons, the Department of the Army on behalf of the Department of Defense recommends that the bill be favorably considered.

Enactment of this legislation will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE,
Secretary of the Army."